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DEPUTY

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10

11      **UNITED STATES DISTRICT COURT**  
12      **SOUTHERN DISTRICT OF CALIFORNIA**

13

14      RAMON BARCIA; MATTHEW CARTER;  
15      on behalf of themselves, and on behalf of all  
15      persons similarly situated,

16      Plaintiff,

17      vs.

18      CONTAIN-A-WAY INC., a California  
19      corporation, doing business as NEXCYCLE  
19      and 20/20 RECYCLE CENTERS,

20      Defendants.

13      CASE No. **'07 CV 938 IEG (JMA)**

14      COMPLAINT FOR DAMAGES,  
15      RESTITUTION, AND INJUNCTIVE  
15      RELIEF:

16      (1) FAILURE TO PAY EARNED  
17      WAGES AND OVERTIME  
18      COMPENSATION IN VIOLATION OF  
19      CAL. LAB. CODE §§ 204, 210, 218, 510,  
19      1194 AND 1198;

20      (2) FAILURE TO PROVIDE REST  
21      PERIODS IN VIOLATION OF CAL. LAB.  
22      CODE §§ 226.7 AND 512;

23      (3) FAILURE TO PROVIDE ACCURATE  
24      ITEMIZED STATEMENTS IN VIOLATION  
24      OF LABOR CODE § 226;

25      (4) UNFAIR COMPETITION IN  
26      VIOLATION OF CAL. BUS. & PROF.  
26      CODE § 17200 *et seq.*;

27      (5) CLAIM FOR BENEFITS DUE,  
28      DECLARATORY RELIEF AND  
28      EQUITABLE RELIEF UNDER ERISA  
28      PLAN [29 U.S.C. § 1132]; and,

28      (6) VIOLATION OF FAIR LABOR  
28      STANDARDS ACT [29 U.S.C. § 216]

28      DEMAND FOR A JURY TRIAL

## **INTRODUCTION**

2       1. This class action is brought by RAMON BARCIA and MATTHEW CARTER  
3 individually and on behalf of all present and former employees employed by DEFENDANTS in  
4 California during the Class Period (hereinafter “PLAINTIFFS”). The DEFENDANTS are  
5 CONTAIN-A-WAY INC., a California corporations, doing business as NEXCYCLE and 20/20  
6 RECYCLE CENTERS (hereinafter collectively referred to as “DEFENDANTS”). DEFENDANTS  
7 systematically failed to pay PLAINTIFFS for the actual numbers of hours worked, regular and  
8 overtime, during the Class Period. These employees were unlawfully paid wages based solely upon  
9 the hours the recycling site was open to the public, without regard to the fact that all floaters and site  
10 attendants were required to work after closing to complete the paperwork and inventory work of the  
11 DEFENDANTS. DEFENDANTS have systematically refused to pay this class of employees for  
12 the substantial amount of hours worked after site closing, including but not limited to overtime  
13 hours. In addition, when acting in the role of the ERISA plan fiduciary for DEFENDANTS’ ERISA  
14 plan, DEFENDANTS failed to properly record all hours worked by these employees so as to  
15 wrongfully prohibit PLAINTIFFS as site attendant and/or floater employees from participating in  
16 the DEFENDANTS’ ERISA plan and receiving the benefits for which they were eligible under the  
17 DEFENDANTS’ ERISA plan. All allegations in this Complaint are based upon information and  
18 belief except for those allegations which pertain to the PLAINTIFFS named herein and their  
19 counsels. Each allegation in this Complaint either has evidentiary support or is likely to have  
20 evidentiary support after a reasonable opportunity for further investigation and discovery.  
21 PLAINTIFFS seek an injunction enjoining such conduct by DEFENDANTS in the future and a  
22 monetary award for the named PLAINTIFFS and all other class members who have been  
23 economically injured by DEFENDANTS’ past conduct.

## **JURISDICTION AND VENUE**

26       2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e) and 29  
27 U.S.C. §216(b). The action is brought as a class action pursuant to Federal Rules of Civil

1 Procedure, §23. The named PLAINTIFFS bring this action on their own behalf, and on behalf of all  
2 persons within the Class as hereinafter defined.

3       3.     Venue is proper in this Court because the DEFENDANTS have and at all relevant  
4 times maintained offices in San Diego County, California and committed wrongful conduct against  
5 members of the class in San Diego County, California.

6

7                   CLASS DEFINITION

8       4.     The CLASS consists of all persons employed by DEFENDANTS during the Class  
9 Period as a site attendant or floater for one or more of DEFENDANTS' recycling sites in California,  
10 who worked more than eight (8) hours in a workday or forty (40) hours in a work week and were  
11 unlawfully not paid compensation for such work pursuant to the applicable California Labor Code  
12 and Industrial Welfare Commission Wage Order Requirements (the "CLASS"). The Class Period is  
13 defined as the period commencing on the date that is within four years prior to the filing of this  
14 complaint and through the class period cutoff date (the "Class Period"). To the extent equitable  
15 tolling operates to toll claims by the CLASS against DEFENDANTS, the Class Period should be  
16 adjusted accordingly.

17       5.     DEFENDANTS, as a matter of a uniform corporate policy, practice and procedure,  
18 and in violation of the applicable California Labor Code ("Labor Code") and Industrial Welfare  
19 Commission ("IWC") Wage Order Requirements, unlawfully, intentionally and knowingly failed to  
20 pay employees for all hours worked, including overtime hours, and instead paid such employees  
21 based solely upon the hours the site was open to the public, without regard to the fact that  
22 employees were required to remain at the site to complete work after the recycling site closed to the  
23 public.

24       6.     DEFENDANTS maintain records from which the Court can ascertain and identify  
25 each of DEFENDANTS' employees who as CLASS members have systematically not been paid for  
26 the hours worked by the employee, as a matter of DEFENDANTS' corporate policy, practices and  
27 procedures.

28

## **CLASS ALLEGATIONS**

3       7. PLAINTIFF RAMON BARCIA was, at all material times mentioned herein, an  
4 individual who resided in California and worked for DEFENDANTS as a floater during the Class  
5 Period. His employment with CONTAINER-A-WAY, doing business as NEXCYCLE and 20/20  
6 RECYCLE CENTERS, in California, began August 11, 2005 and continued to May 2007. Mr.  
7 Barcia is paid hourly at a regular rate of \$11.25 per hour. Using this hourly rate, DEFENDANTS  
8 paid Mr. Barcia not based upon the actual number of hours worked, but instead solely on the basis  
9 of fictional hours manufactured by the Defendant, irrespective of the fact that Mr. Barcia, like all  
10 other floaters and site attendants, was uniformly required to work at a site before opening and after  
11 closing. One example of this practice by the DEFENDANTS occurred when a supervisor came to  
12 Mr. Barcia's house where the supervisor altered and forged time-card of the employees. As a result  
13 of the DEFENDANTS' practice, Mr. Barcia was not paid for all hours worked as required by  
14 California law, including but not limited to overtime hours. Mr. Barcia suffered an economic injury  
15 as the result the DEFENDANTS' failure to pay him for all hours worked. DEFENDANTS also  
16 failed to provide Mr. Barcia with statutorily required rest period breaks during the Class Period.  
17 After considering the actual number of hours worked by Mr. Barcia, Mr. Barcia's hours worked for  
18 DEFENDANTS exceeds 40 hours per week and therefore makes Mr. Barcia an employee of  
19 DEFENDANTS who is eligible to participate in and receive benefits from DEFENDANTS' ERISA  
20 plan.

21       8. PLAINTIFF MATTHEW CARTER was, at all material times mentioned herein, an  
22 individual who resided in California who worked for DEFENDANTS during the Class Period. His  
23 employment with CONTAINER-A-WAY, doing business as NEXCYCLE and 20/20 RECYCLE  
24 CENTERS, as a recycling site attendant operated by DEFENDANTS, in California, began in  
25 September of 2006 and continues to the present. Mr. Carter was paid hourly at a regular hourly rate  
26 of \$9.00 per hour. Using this agreed regular rate, DEFENDANTS paid Mr. Carter, not based upon  
27 the actual number of hours worked by Mr. Carter, but instead solely on the basis of the hours the

1 recycling site was open to the public, irrespective of the fact that Mr. Carter, like all other site  
 2 attendants, was uniformly required to work at his site after closing. As a result of the  
 3 DEFENDANTS' practice, Mr. Carter was not paid for all hours worked as required by California  
 4 law, including but not limited to overtime hours. Mr. Carter suffered an economic injury as the  
 5 result the DEFENDANTS' failure to pay him for all hours worked at his regular rate of pay.  
 6 DEFENDANTS also failed to provide Mr. Carter with statutorily required rest period breaks during  
 7 the Class Period. After considering the actual number of hours worked by Mr. Carter, Mr. Carter's  
 8 hours worked for DEFENDANTS exceeds 40 hours per week and therefore makes Mr. Carter an  
 9 employee of DEFENDANTS who is eligible to participate in and receive benefits from  
 10 DEFENDANTS' ERISA plan. More than five hundred (500) persons have suffered the same  
 11 economic injury as PLAINTIFFS during the Class Period as a result of DEFENDANTS systematic  
 12 and uniform unlawful business practice.

13       9.      The California Legislature has commanded that "all wages... ...earned by any person  
 14 in any employment are due and payable twice during each calendar month, on days designated in  
 15 advance by the employer as the regular paydays"; and further that "[a]ny work in excess of eight  
 16 hours in one workday and any work in excess of 40 hours in any one workweek... ...shall be  
 17 compensated at the rate of no less than one and one-half times the regular rate of pay for an  
 18 employee." (Lab. Code §204 and §510(a).) The Industrial Welfare Commission (IWC), however,  
 19 is statutorily authorized to "establish exemptions from the requirement that an overtime rate of  
 20 compensation be paid... ...for executive, administrative, and professional employees, provided [inter  
 21 alia] that the employee is primarily engaged in duties that meet the test of the exemption, [and]  
 22 customarily and regularly exercises discretion and independent judgment in performing those  
 23 duties..." (Lab. Code §510(a).) None of the PLAINTIFFS or the members of the CLASS qualify  
 24 for exemption from the above requirements.

25       10.     This Class Action meets the statutory prerequisites for the maintenance of a Class  
 26 Action as set forth in the Federal Rules of Civil Procedure, rule 23, in that:

27               (a)     The persons who comprise the CLASS are so numerous that the joinder of all

1 such persons is impracticable and the disposition of their claims as a class will benefit the parties  
2 and the Court;

3                 (b)     Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
4 are raised in this Complaint are common to the CLASS and will apply uniformly to every member  
5 of the CLASS;

6                 (c)     The claims of the representative PLAINTIFFS are typical of the claims of  
7 each member of the CLASS. PLAINTIFFS, like all other members of the CLASS, were  
8 systematically not paid wages, including overtime wages, for hours worked before site opening and  
9 after the recycling site was closed to the public, arising from DEFENDANTS' uniform practice and  
10 violations of the laws of California. PLAINTIFFS and the members of the CLASS were and are  
11 similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
12 misconduct engaged in by DEFENDANTS' policy and practice of paying employees based solely  
13 upon the hours the site was open to the public, and not for the actual hours worked by employees,  
14 including but not limited to overtime hours (i.e. in excess of eight (8) hours in one workday and/or  
15 in excess of forth (40) hours per workweek).

16                 (d)     The representative PLAINTIFFS will fairly and adequately represent and  
17 protect the interest of the CLASS, and has retained counsel who are competent and experienced in  
18 Class Action litigation. There are no material conflicts between the claims of the representative  
19 PLAINTIFFS and the members of the CLASS that would make class certification inappropriate.  
20 Counsel for the CLASS will vigorously assert the claims of all Class Members.

21                 11.     In addition to meeting the statutory prerequisites to a Class Action, this action is  
22 properly maintained as a Class Action pursuant to the Federal Rules of Civil Procedure, rule 23(b),  
23 in that:

24                 (a)     Without class certification and determination of declaratory, injunctive,  
25 statutory and other legal questions within the class format, prosecution of separate actions by  
26 individual members of the CLASS will create the risk of:

27                      1)     Inconsistent or varying adjudications with respect to individual  
28

1 members of the CLASS which would establish incompatible standards of conduct for the parties  
2 opposing the CLASS; or,

3                   2)     Adjudication with respect to individual members of the CLASS which  
4 would as a practical matter be dispositive of interests of the other members not party to the  
5 adjudication or substantially impair or impede their ability to protect their interests.

6                   (b)    The parties opposing the CLASS have acted on grounds generally applicable  
7 to the CLASS, making appropriate class-wide relief with respect to the CLASS as a whole in that  
8 the Defendants systematically failed to pay employees based upon the actual number of hours  
9 worked and failed to accurately record the hours worked by site attendant and floater employees;

10                  (c)    Common questions of law and fact exist as to the members of the CLASS and  
11 predominate over any question affecting only individual members, and a Class Action is superior to  
12 other available methods for the fair and efficient adjudication of the controversy, including  
13 consideration of:

14                  1)     The interests of the members of the CLASS in individually  
15 controlling the prosecution or defense of separate actions;

16                  2)     The extent and nature of any litigation concerning the controversy  
17 already commenced by or against members of the CLASS;

18                  3)     The desirability or undesirability of concentrating the litigation of the  
19 claims in the particular forum; and,

20                  4)     The difficulties likely to be encountered in the management of a Class  
21 Action.

22                 12.    This Court should permit this action to be maintained as a Class Action pursuant to  
23 the Federal Rules of Civil Procedure, rule 23, because:

24                  (a)    The questions of law and fact common to the CLASS predominate over any  
25 question affecting only individual members;

26                  (b)    A Class Action is superior to any other available method for the fair and  
27 efficient adjudication of the claims of the members of the CLASS;

(c) The members of the CLASS are so numerous that it is impractical to bring all members of the CLASS before the Court;

(d) PLAINTIFF, and the other CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' conduct has inflicted upon the CLASS;

(f) There is a community of interest in ensuring that the combined assets and available insurance of DEFENDANTS are sufficient to adequately compensate the members of the CLASS for the injuries sustained;

(g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CLASS, thereby making final class-wide relief appropriate with respect to the CLASS as a whole; and

(h) The members of the CLASS are readily ascertainable from the business records of DEFENDANTS. The CLASS consists of all persons employed by DEFENDANTS during the Class Period as a site attendant or floater for one or more of DEFENDANTS' recycling sites in California, who worked before site opening and after site closing and were unlawfully not paid compensation for such work pursuant to the applicable California Labor Code and Industrial Welfare Commission Wage Order Requirements (the "CLASS"). To the extent equitable tolling operates to toll claims by the CLASS against Defendants, the Class period should be adjusted accordingly. To the extent that, due to the DEFENDANTS' violation of Cal. Labor Code § 226(a) and Cal. Code of Regulations, Title 8, § 11040(7), DEFENDANTS have failed to maintain records required by statute, the consequences for such failure should fall on the DEFENDANTS, not the employees, and DEFENDANTS are therefore estopped, as a matter of law, to contest the evidence as to the actual hours worked by employees.

## **DEFENDANTS**

2       13.     Defendant CONTAINER-A-WAY, at all times during the Class Period was a  
3 California Corporation with its principal place of business in the State of California.  
4 CONTAINER-A-WAY operates recycling sites throughout California, including but not limited to  
5 sites in San Diego, Redlands, and Fairfield, California. CONTAINER-A-WAY operates these  
6 recycling sites using its corporate name, or under the fictitious business names NEXCYCLE and/or  
7 20/20 RECYCLE CENTERS, and therefore, collectively, these businesses are jointly referred to  
8 herein as CONTAINER-A-WAY or DEFENDANTS. CONTAINER-A-WAY was the employer of  
9 PLAINTIFFS and is or was the current and/or former employer of the putative CLASS members  
10 during the Class Period. CONTAINER-A-WAY systematically, failed to pay wages due for hours  
11 worked at the recycling sites to PLAINTIFFS and the other members of the CLASS as a matter of  
12 corporate policy, practice and procedure.

## THE CONDUCT

14. PLAINTIFF RAMON BARCIA was hired by defendant CONTAINER-A-WAY on  
15 or about August 11, 2005 as a floater employee for CONTAINER-A-WAY's recycling sites in  
16 Monterey and Santa Cruz counties, California. As a floater, his job duties are to attend various  
17 recycling sites where needed in Monterey and Santa Cruz counties, and perform the same duties as a  
18 site attendant employee. Floaters also spend time delivering supplies and picking up paperwork.  
19 None of these duties are "exempt" and floaters, just like site attendants, are not exempt and are paid  
20 hourly by DEFENDANTS. Just like a site attendant, Mr. Barcia was required to open the recycling  
21 center at 10:00 a.m. and keep the recycling center open to the public until 4:30 p.m. In addition, as  
22 a floater for DEFENDANTS, Mr. Barcia was required, after site closing, to continue working by  
23 completing DEFENDANTS' paperwork and handling the recycled materials for storage and  
24 transport. Also, as a floater, Mr. Barcia was required to spend time driving and making phone calls  
25 for the DEFENDANTS for which time he was not compensated. As part of the job duties of  
26 PLAINTIFFS, DEFENDANTS uniformly required employees to perform these activities before the

1 employee can leave the site and after the site is closed to the public. As a result, Mr. Barcia has  
2 been forced to work before a site opening and at the site after closing at 4:30 p.m., often until 6:00  
3 p.m., however, DEFENDANTS systematically failed, and continue to refuse, to fully compensate  
4 Mr. Barcia for the hours worked after site closing (4:30 p.m.). DEFENDANTS are aware of the  
5 additional work, but as a matter of corporate practice and policy, instead record Mr. Barcia's hours  
6 worked based solely upon the time the site is open to the public (10:00 a.m. to 4:30 a.m.), and  
7 systematically disregarded the actual hours worked by Mr. Barcia. DEFENDANTS' practice and  
8 policy therefore requires Mr. Barcia to work hours each day without compensation in violation of  
9 California law. Further, if Mr. Barcia's hours worked were correctly recorded and paid by  
10 DEFENDANTS, many of the additional hours worked by Mr. Barcia would have to be paid at the  
11 overtime wage required by Cal. Labor Code § 510. Similarly, if Mr. Barcia's hours worked were  
12 correctly recorded by DEFENDANTS, Mr. Barcia would be eligible to receive benefits under the  
13 DEFENDANTS' ERISA plan. Finally, while Mr. Barcia received a break for lunch, Mr. Barcia was  
14 not provided with the statutorily required rest period breaks during the class period based upon his  
15 actual hours worked.

16       15.     Mr. Barcia attempted to accurately record the actual hours worked, however, he  
17 learned that representatives changed employee time records to reflect only the hours the site was  
18 open to the public, and not the actual hours worked by Mr. Barcia. Mr. Barcia had complained  
19 about the fabrication of the hours and the underpayment of wages due to his supervisor, but such  
20 complaint was ignored.

21       16.     The relevant facts regarding the employment and payment of wages to PLAINTIFF  
22 MATTHEW CARTER are nearly identical to the circumstances of Mr. Barcia. PLAINTIFF  
23 MATTHER CARTER was hired by defendant CONTAINER-A-WAY on or about September of  
24 2006 as a site attendant employee for one of the CONTAINER-A-WAY recycling sites in Fairfield,  
25 California, where his job duties are to attend the recycling center and pay customers for the  
26 recyclable aluminum cans, plastic bottles and glass that are returned by the customer. Mr. Carter is  
27 required to open the recycling center at 10:00 a.m. and keep the recycling center open to the public  
28

1 until 4:30 p.m. In addition, as a recycling site attendant for DEFENDANTS, Mr. Carter is required,  
2 after site closing, to continue working by completing DEFENDANTS' paperwork and handling the  
3 recycled materials for storage and transport. As part of the job duties for PLAINTIFFS and all other  
4 site attendants, DEFENDANTS require employees to perform these activities before the employee  
5 can leave and after the site is closed to the public. As a result, Mr. Carter has been forced to  
6 continue working at the site after closing at 4:30 p.m., often until 8:30 p.m., however,  
7 DEFENDANTS systematically failed, and continue to refuse, to compensate Mr. Carter for the  
8 hours worked after site closing (4:30 p.m.). DEFENDANTS are aware of the additional work, but  
9 as a matter of corporate practice and policy, instead record Mr. Carter's hours worked based solely  
10 upon the time the recycling site is open to the public (10:00 a.m. to 4:30 a.m.), and systematically  
11 disregarded the actual hours worked by Mr. Carter. DEFENDANTS' practice and policy therefore  
12 requires Mr. Carter to work additional hours each day without compensation in violation of  
13 California law. Further, if Mr. Carter's hours worked were correctly recorded and paid by  
14 DEFENDANTS, many of the additional hours worked by Mr. Carter would have to be paid at the  
15 overtime wage required by Cal. Labor Code § 512. Similarly, if Mr. Carter's hours worked were  
16 correctly recorded by DEFENDANTS, Mr. Carter would be eligible to receive benefits under the  
17 DEFENDANTS' ERISA plan. Finally, while Mr. Carter received a break for lunch, Mr. Carter was  
18 not provided with the statutorily required rest period breaks during the class period based upon his  
19 actual hours worked.

20       17. DEFENDANTS systematically recorded hours worked and thereupon paid wages to  
21 the PLAINTIFFS and all other members of the CLASS, using this same unlawful practice and  
22 policy of recording time based solely upon the time the site was open to the public and without  
23 regard to the hours actually worked by employees. Consequently, PLAINTIFFS and the other  
24 members of the CLASS were uniformly and systematically denied payment for wages and  
25 compensation for hours worked and denied overtime wages for hours worked in excess of eight  
26 hours per day and/or forty hours per week during the class period. In addition, DEFENDANTS,  
27 acting in their role as the ERISA plan fiduciary, fail to properly record the number of hours worked  
28

1 by PLAINTIFFS and all other employees for the purpose of denying them participation in and  
2 benefits under the DEFENDANTS' ERISA plan. DEFENDANTS were informed of the wrongful  
3 recording of hours worked, but refused and failed to correct such recording of hours for purposes of  
4 the ERISA plan. If all hours worked by site attendant and floater employees were correctly  
5 recorded by the ERISA plan fiduciary, all site attendant and floater employees would be eligible to  
6 receive benefits under the DEFENDANTS' ERISA plan.

7       18. Accordingly, and despite the fact that PLAINTIFFS, and the other members of the  
8 CLASS, regularly worked after the recycling center closed to the public and in excess of 8 hours a  
9 day and 40 hours per week, they did not receive wages for all hours worked and did not receive  
10 overtime compensation, and as a result, all suffered the same form of economic injury.

11       19. In addition, under Cal. Lab. Code §§ 226.7 and 512, based upon the actual hours  
12 worked by the employees, PLAINTIFFS and the other members of the CLASS, were required to be  
13 provided with at least two (2) rest period breaks each workday. DEFENDANTS failed to provide  
14 PLAINTIFFS and all other members of the CLASS with these statutorily required rest period breaks  
15 during the Class Period which has caused additional economic injuries to PLAINTIFFS and other  
16 members of the CLASS.

17       20. Finally, DEFENDANTS engaged in a policy and practice of threatening and/or  
18 terminating employees who complained about the DEFENDANTS' violations of the California  
19 Labor Code or who requested to be paid for all hours worked. Further, DEFENDANTS threaten to,  
20 and in fact do, retaliate against employees who refuse to participate in activities that violate  
21 California law, including but not limited to, inaccurate reporting of hours worked and the fraudulent  
22 alteration of time records and employee information. For example, Candy Dotson, a regional  
23 manager of Defendants, went to all of the sites she manages and instituted DEFENDANTS' policy  
24 and practice of threatening and/or terminating employees who complained about the  
25 DEFENDANTS' violations of the California Labor Code by informing employees that they would  
26 be terminated if they reported Labor Code violations, sought to enforce their rights under the Labor  
27 Code, and/or disclosed their knowledge of Labor Code violations by the DEFENDANTS.

28

1  
**FIRST CAUSE OF ACTION**

2  
**For Failure To Pay Earned Wages and Overtime Compensation**

3  
[Cal. Lab. Code §§ 204, 210, 218, 510, 1194 and 1198]

4  
(By PLAINTIFFS and the CLASS and Against all Defendants)

5  
21. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this  
6 reference, as though fully set forth herein, paragraphs 1 through 20 of this Complaint.

7  
22. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as  
8 follows: "all wages... ...earned by any person in any employment are due and payable twice during  
9 each calendar month, on days designated in advance by the employer as the regular paydays." Cal.  
10 Lab. Code § 510 further provides that employees in California shall not be employed more than  
11 eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional  
12 compensation beyond their regular wages in amounts specified by law.

13  
23. Cal. Lab. Code § 218 and §1194 establishes an employee's right to recover unpaid  
14 wages overtime compensation, interest thereon, together with the costs of suit, and attorneys fees.  
15 Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed  
16 by the Industrial Welfare Commission is unlawful.

17  
24. As set forth herein, DEFENDANTS' policy and practice was to intentionally and  
18 uniformly deny payment to site attendant and floater employees for all hours worked, and further  
19 failed to pay overtime compensation for hours worked in excess of eight hours in a day and/or forty  
20 hours in a workweek. This was done in an illegal attempt to avoid payment of earned wages,  
21 overtime compensation and other benefits in violation of the Cal. Lab. Code and Industrial Welfare  
22 Commission requirements.

23  
25. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515,  
24 set forth the requirements which must be complied with to classify an employee as exempt from  
25 applicable labor laws. For an employee to be exempt from these rules as a bona fide "executive,"  
26 all the following criteria must be met and DEFENDANTS have the burden of proving that:

27  
(a) The employee's primary duty must be management of the enterprise, or of a

1 customarily recognized department or subdivision; and,

2                 (b)     The employee must customarily and regularly direct the work of at least two  
3 (2) or more other employees; and,

4                 (c)     The employee must have the authority to hire and fire, or to command  
5 particularly serious attention to his or his recommendations on such actions affecting other  
6 employees; and,

7                 (d)     The employee must customarily and regularly exercise discretion and  
8 independent judgment; and,

9                 (e)     The employee must be primarily engaged in duties which meet the test of  
10 exemption.

11 No member of the CLASS was or is an executive because they all fail to meet the requirements of  
12 being an exempt "executive" within the meaning of Order No. 4.

13         26.     The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515,  
14 set forth the requirements which must be complied with to classify an employee as exempt from  
15 applicable labor laws. For an employee to be exempt from these rules as a bona fide  
16 "administrator," all the following criteria must be met and DEFENDANTS have the burden of  
17 proving that:

18                 (a)     The employee must perform office or non-manual work directly related to  
19 management policies or general business operation of the employer; and,

20                 (b)     The employee must customarily and regularly exercise discretion and  
21 independent judgment; and,

22                 (c)     The employee must regularly and directly assist a proprietor or an exempt  
23 administrator; or,

24                 (d)     The employee must perform, under only general supervision, work requiring  
25 special training, experience, or knowledge, or,

26                 (e)     The employee must execute special assignments and tasks under only general  
27 supervision; and,

(f) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the CLASS was or is an administrator because they all fail to meet the requirements for being an exempt “administrator” under Order No. 4.

27. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515, set forth the requirements which must be complied with to classify an employee as exempt from applicable labor laws. For an employee to be exempt from these rules as a bona fide "professional," all the following criteria must be met and DEFENDANTS have the burden of proving that:

(a) The employee is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

1) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part or necessarily incident to any of the above work; or,

2) Work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee or work that is an essential part of or incident to any of the above work; and,

3) Whose work is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be standardized in relation to a given period of time.

(b) The employee must customarily and regularly exercise discretion and independent judgment; and.

(c) The employee earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment.

PLAINTIFFS and all members of the CLASS were uniformly paid less than two times the

1 minimum wage during the Class Period. No member of the CLASS was or is a professional  
2 because they all fail to meet the requirements of being an exempt "professional" within the meaning  
3 of Order No. 4.

4 28. PLAINTIFFS, and other members of the CLASS, do not fit the definition of an  
5 exempt executive, administrative, or professional employee because:

6 (a) They did not work as executives or administrators; and,  
7 (b) The professional exemption articulated in Wage Order No. 4, section  
8 (1)(A)(3)(h) and Labor Code § 515, do not apply to PLAINTIFFS, or to the other members of the  
9 CLASS, because they did not meet all the applicable requirements to work under any of the  
10 exemptions.

11 29. During the class period, the PLAINTIFFS, and other members of the CLASS,  
12 worked more hours than they were paid for, constituting a failure to pay all earned wages.

13 30. During the Class Period, the PLAINTIFFS, and other members of the CLASS,  
14 worked more than eight hours in a workday, and/or more than forty hours in a work week.

15 31. At all times relevant times, DEFENDANTS failed to pay PLAINTIFFS, and other  
16 members of the CLASS, wages for the hours they have worked as required by Cal. Lab. Code §204  
17 and § 218, and overtime compensation for the hours they have worked in excess of the maximum  
18 hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even though  
19 PLAINTIFFS, and the other members of the CLASS, were regularly required to work, and did in  
20 fact work, hours after the site closed and before the site opened, which further included overtime  
21 hours.

22 32. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the  
23 PLAINTIFFS, and the other members of the CLASS, for the hours actually worked, the  
24 PLAINTIFFS, and the other members of the CLASS, have suffered, and will continue to suffer, an  
25 economic injury in amounts which are presently unknown to them and which will be ascertained  
26 according to proof at trial.

27 33. DEFENDANTS knew or should have known that PLAINTIFFS, and the other

28

1 members of the CLASS, performed hours of work before opening and after the closing of the site to  
2 the public. DEFENDANTS systematically elected, either through intentional malfeasance or gross  
3 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and  
4 procedure.

5       34. PLAINTIFFS, and the other members of the CLASS, request recovery of wages due  
6 and applicable overtime compensation according to proof, interest, attorney's fees and cost pursuant  
7 to Cal. Lab. Code § 218.5 and § 1194(a), as well as the assessment of any statutory penalties against  
8 DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other statutes. Further,  
9 PLAINTIFFS, and the other members of the CLASS, are entitled to seek and recover reasonable  
10 attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5 and 1194.

11       35. In performing the acts and practices herein alleged in violation of labor laws and  
12 refusing to provide the requisite overtime compensation, the DEFENDANTS acted and continue to  
13 act intentionally, oppressively, and maliciously toward the PLAINTIFFS, and toward the other  
14 members of the CLASS, with a conscious and utter disregard of their legal rights, or the  
15 consequences to them, and with the despicable intent of depriving them of their property and legal  
16 rights and otherwise causing them injury in order to increase corporate profits at the expense of  
17 PLAINTIFFS and the members of the Class.

## **SECOND CAUSE OF ACTION**

## **For Failure To Provide Rest Periods**

**[Cal. Lab. Code §§ 226.7 and 512]**

**(By PLAINTIFFS and the CLASS and Against All DEFENDANTS)**

23       36. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by  
24 reference, as though fully set forth herein, paragraphs 1 through 35 of this Complaint.

37. Cal. Lab. Code § 226.7 provides that employers shall authorize and permit  
employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours of  
work.

1       38. Cal. Lab. Code § 226.7 provides that if an employer fails to provide and employee  
2 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of  
3 pay at the employee's regular rate of compensation for each workday that the rest period is not  
4 provided.

5       39. DEFENDANTS have intentionally and improperly denied rest periods to  
6 PLAINTIFFS, and other members of the CLASS, in violation of Cal. Lab. Code §§ 226.7 and 512,  
7 based upon the hours worked by DEFENDANTS' recycling site attendant and floater employees.

8       40. At all times relevant hereto, the PLAINTIFFS, and other members of the CLASS,  
9 have worked more than four hours in a workday. At all times relevant hereto, DEFENDANTS  
10 failed to provide rest periods as required by Cal. Lab. Code §§ 226.7 and 512.

11       41. By virtue of DEFENDANTS' unlawful failure to provide rest periods to them,  
12 PLAINTIFFS, and other members of the CLASS, have suffered, and will continue to suffer,  
13 damages in the amounts which are presently unknown to them, but which will be ascertained and  
14 established according to proof at trial.

15       42. PLAINTIFFS are informed and believe, and based upon that information and belief  
16 alleges, that DEFENDANTS know or should have known that the PLAINTIFFS, and the other  
17 members of the CLASS, were entitled to rest periods but purposely elected not to provide these  
18 mandated periods.

19       43. PLAINTIFFS, and the other members of the CLASS, are entitled to seek and recover  
20 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 226.7 and 512.

21       44. In performing the acts and practices herein alleged in violation of the labor laws, the  
22 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward the  
23 PLAINTIFFS, and toward the other members of the CLASS, with a conscious and utter disregard of  
24 their rights, or the consequences to them, and with the despicable intent of depriving them of their  
25 property and legal rights and otherwise causing them injury in order to increase corporate profits at  
26 the expense of PLAINTIFFS and the other members of the CLASS.

27  
28

**THIRD CAUSE OF ACTION**

**For Failure to Provide Accurate Itemized Statements**

**[Cal. Lab. Code § 226]**

**(By PLAINTIFFS and the CLASS and against All Defendants)**

45. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this  
reference, as though fully set forth herein, paragraphs 1 through 44 of this Complaint.

46. Cal. Labor Code § 226 provides that an employer must furnish employees with "an  
accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by  
the employee, (3) the number of piece rate units earned and any applicable piece rate if the  
employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on  
written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)  
the inclusive dates of the period for which the employee is paid, (7) the name of the employee and  
his or her social security number, except that by January 1, 2008, only the last four digits of his or  
her social security number or an employee identification number other than a social security number  
may be shown on the itemized statement, (8) the name and address of the legal entity that is the  
employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding  
number of hours worked at each hourly rate by the employee."

47. At all times relevant herein, DEFENDANTS violated Labor Code § 226, in that  
DEFENDANTS failed to properly and accurately itemize the number of hours worked by  
PLAINTIFFS, and the other members of the CLASS at the effective regular rates of pay and the  
effective overtime rates of pay.

48. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §  
226, causing damages to PLAINTIFFS, and the other members of the CLASS. These damages  
include, but are not limited to, unpaid wages for hours actually worked, the costs expended  
calculating the true hours worked and the amount of employment taxes which were not properly  
paid to state and federal tax authorities, plus reasonable attorney's fees and costs pursuant to Labor  
Code § 226(g).

## **FOURTH CAUSE OF ACTION**

#### **For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code § 17200 et seq.]**

**(By PLAINTIFFS and the CLASS and against All Defendants)**

49. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 48 of this Complaint.

50. DEFENDANTS are “persons” as that term is defined under Cal. Bus. & Prof. Code § 17021.

51. Cal. Bus. & Prof. Code § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17200 applies to violations of labor laws and in the employment context.

52. At all times relevant hereto, by and through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful' practices by failing to pay PLAINTIFFS, and the other members of the CLASS, wages due, and have failed to provide rest breaks, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. and Prof. Code § 17200 et seq., and have thereby deprived PLAINTIFF, and the other members of the CLASS, of fundamental rights and privileges and caused them economic injury as herein alleged. DEFENDANTS engaged in unfair competition by withholding compensation for hours worked. DEFENDANTS further engaged in unfair and unlawful business practices by failing to keep accurate information and time records and failing to accurately itemize the total hours worked by DEFENDANTS' employees, in violation of California law. As herein alleged, DEFENDANTS' conduct was unlawful in that, with respect to all California employees, DEFENDANTS uniformly violated California law and regulations, including but not limited to Labor Code §201, §202, §216, §204, §218, §226, §226.7, §510, §512, §1102.5, §1174, §1175, §1198, and 8 C.C.R. § 11040(7). DEFENDANTS' conduct also violated federal law.

53. By and through the unfair and unlawful business practices described herein, Defendants have obtained valuable property, money, and services from the PLAINTIFFS, and the

1 other members of the CLASS, and has deprived them of valuable rights and benefits guaranteed by  
2 law and contract, all to their detriment and to the benefit of DEFENDANTS so as to allow  
3 DEFENDANTS to unfairly compete against competitors who comply with the law.

4 54. All the acts described herein as violations of, among other things, the Cal. Lab. Code  
5 and Industrial Welfare Commission Wage Order, are unlawful and in violation of public policy; and  
6 in addition are immoral, unethical, oppressive, and unscrupulous, and Thereby constitute unfair and  
7 unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq.

8 55. PLAINTIFFS, and the other members of the CLASS, are entitled to, and do, seek  
9 such relief as may be necessary to restore to them the money and property which DEFENDANTS  
10 have acquired, or of which PLAINTIFFS, and other members of the CLASS, have been deprived,  
11 by means of the above described unfair and unlawful business practices.

12 56. PLAINTIFFS, and the other members of the CLASS, are further entitled to, and do,  
13 seek a declaration that the above described business practices are unfair and unlawful and that  
14 injunctive relief should be issued enjoining DEFENDANTS from engaging in any of these unfair  
15 and unlawful business practices in the future.

16 57. PLAINTIFFS, and the other members of the CLASS, have no plan, speedy, and/or  
17 adequate remedy at law that will end the unfair and unlawful business practices of DEFENDANTS.  
18 As a result of the unfair and unlawful business practices described above, PLAINTIFFS, and the  
19 other members of the CLASS, have suffered and will continue to suffer irreparable harm unless  
20 DEFENDANTS are restrained from continuing to engage in these unfair and unlawful business  
21 practices. In addition, DEFENDANTS should be required to disgorge the unpaid moneys to  
22 PLAINTIFFS, and the other members of the CLASS.

23 **FIFTH CAUSE OF ACTION**

24 **For Declaratory and Injunctive Relief Under an ERISA Plan**

25 **[29 U.S.C. 1132]**

26 **(By PLAINTIFFS and the CLASS and against All Defendants)**

1       58. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this  
2 reference, as though fully set forth herein, paragraphs 1 through 57 of this Complaint.

3       59. The number of hours worked by PLAINTIFFS and the CLASS for DEFENDANTS  
4 were not correctly recorded by the DEFENDANTS when acting in a fiduciary capacity as the  
5 ERISA plan administrator. PLAINTIFFS and the members of the CLASS actually worked in  
6 excess of 40 hours per week. If the number of hours worked by PLAINTIFFS and the CLASS for  
7 DEFENDANTS were not correctly recorded by the ERISA plan fiduciary, PLAINTIFFS and the  
8 other members of the CLASS would have been and would be eligible for benefits under the  
9 DEFENDANTS' ERISA plan pursuant to the terms of the ERISA plan. Any employee of the  
10 DEFENDANTS who works at least 40 hours per week is eligible to receive benefits under the  
11 DEFENDANTS' ERISA plan pursuant to the terms of the ERISA plan.

12       60. An actual controversy exists between PLAINTIFFS and the CLASS, on the one  
13 hand, and DEFENDANTS, as the fiduciary for the ERISA plan, one the other, with respect to the  
14 proper recording of hours worked for purposes of determining participation and eligibility under the  
15 DEFENDANTS' ERISA plan. PLAINTIFFS, on behalf of themselves and on behalf of the CLASS,  
16 contend that they work in excess of 40 hours per week and are therefore eligible to receive benefits  
17 under the ERISA plan, yet DEFENDANTS, acting as the plan fiduciary, knowingly records the  
18 number of hours worked by PLAINTIFFS and the CLASS incorrectly, and on that basis, has denied  
19 and continues to deny participation in the ERISA plan to such employees. DEFENDANTS'  
20 conduct, as the ERISA plan fiduciary, in failing to correctly record hours worked and deny plan  
21 participation to employees, is arbitrary, capricious, in bad faith and malicious.

22       61. PLAINTIFFS, on behalf of themselves and on behalf of the CLASS, request a  
23 judicial declaration of the rights of the parties pursuant to the terms of the ERISA plan, and further  
24 requests a judicial declaration that DEFENDANTS are required to record the actual number of  
25 hours worked by employees for purposes of determining participation in and/or eligibility for the  
26 ERISA plan.

27       62. PLAINTIFFS, on behalf of themselves and on behalf of the CLASS, seek injunctive

1 relief requiring the plan fiduciary to correct ERISA plan recordkeeping and all other equitable relief  
 2 available to PLAINTIFFS and the CLASS, pursuant to 29 U.S.C. § 1132(a)(3).  
 3

4 63. 29 U.S.C. § 1132(g) entitles a plaintiff who prevails in obtaining any of the above  
 5 relief to an award of reasonable attorneys' fees and costs under the remedial purposes and policies  
 6 of ERISA. As a result of the conduct of DEFENDANTS, as ERISA plan fiduciary, in the  
 7 recordation of hours for purposes of the ERISA plan, PLAINTIFFS have been forced to retain and  
 8 in fact retained legal counsel and have necessarily incurred attorneys' fees and costs in prosecuting  
 9 this claim and action. PLAINTIFFS request an award of all attorneys' fees and costs, including a  
 multiplier enhancement of the lodestar fee, according to law in an amount to be determined.  
 10

11 64. Further, to the extent that DEFENDANTS, as the ERISA plan fiduciary, are found to  
 12 have violated any provision of ERISA, PLAINTIFFS seek all appropriate and available relief for  
 13 such violations.  
 14

#### **SIXTH CAUSE OF ACTION**

##### **For Violation of the Fair Labor Standards Act**

15 [29 U.S.C. § 201 et seq.]  
 16

17 (Against All Defendants)

18 64. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this  
 19 reference, as though fully set forth herein, paragraphs 1 through 63 of this Complaint.  
 20

21 65. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., states that an employee must  
 22 be compensated for all hours worked, including all straight time compensation and overtime  
 23 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction  
 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.  
 24

25 66. PLAINTIFFS and the CLASS were all paid by DEFENDANTS on an hourly basis at  
 26 a regular and agreed hourly rate. PLAINTIFFS and the CLASS regularly worked more than 40  
 27 hours per week, but were not paid compensation for all hours worked, including overtime hours.  
 28 PLAINTIFFS and the CLASS were not "exempt" from the requirements of the Fair Labor

1 Standards Act.

2 67. DEFENDANTS violated the Fair Labor Standards Act by failing to pay hourly  
3 employees for all hours worked, including overtime hours, as alleged herein above.  
4

5 **PRAYER**  
6

7 WHEREFOR, PLAINTIFFS, on behalf of themselves and the similarly situated CLASS of  
8 employees, pray for judgment against each Defendant, jointly and severally, as follows:  
9

10 1. **ON THE FIRST CAUSE OF ACTION**  
11

12 A) For compensatory damages, including lost wages, commissions, bonuses, and other  
13 losses, during the period commencing on the date that is four years prior to the date of the filing of  
14 this Complaint, according to proof;  
15 B) For general damages, according to proof;  
16 C) For punitive damages, according to proof;  
17 D) For an award of interest, including prejudgment interest at the legal rate;  
18 E) For statutory damages, including reasonable attorneys' fees and cost of suit.

19 2. **ON THE SECOND CAUSE OF ACTION**  
20

21 A) One hour of pay for each workday in which a rest period break was not provided for  
22 each four hours of work during the period commencing on the date that is within four years prior to  
23 the filing of this Complaint;  
24 B) For punitive damages, according to proof;  
25 C) For an award of interest, including prejudgment interest at the legal rate;  
26 D) For attorneys' fees and costs.

27 3. **ON THE THIRD CAUSE OF ACTION**  
28

A) For wages, statutory damages and/or penalties as authorized by law for each

violation of Labor Code § 226, in an amount according to proof at the time of trial;

- B) For general damages, according to proof;
- C) For punitive damages, according to proof;
- D) For other injunctive relief;
- E) For an award of interest, including prejudgment interest at the legal rate;
- F) For statutory damages, including reasonable attorneys' fees and cost of suit.

#### 4. ON THE FOURTH CAUSE OF ACTION

- A) For restitution and restitutionary disgorgement;
- B) For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper;
- C) For other injunctive relief ordering DEFENDANTS to notify the CLASS that they have not been paid the proper amounts required in accordance with California law.

## **5. ON THE FIFTH CAUSE OF ACTION**

- A) For a judicial declaration of the rights of the parties, violations of ERISA and clarifications of benefits owed;
- B) For injunctive relief requiring the ERISA plan fiduciary to record the actual number of hours worked for purposes of the ERISA plan and to require the ERISA plan fiduciary to correct and compile the appropriate wage and hour records.
- C) For all equitable relief allowable under 29 U.S.C. §1132(a)(3), including any applicable interest thereon.
- D) For attorneys' fees and costs.

## **6. ON THE SIXTH CAUSE OF ACTION**

- A) For restitution, damages, unpaid compensation and/or liquidated damages;
- B) For attorneys' fees and costs.

1           **7. ON ALL CAUSES OF ACTION**

2           A)     For an order certifying that this action may be maintained as a class action against  
3 the DEFENDANTS and which also appoints PLAINTIFFS and their counsel to represent the  
4 CLASS and directs that notice be given to the members of the CLASS; and,

5           B)     For such other and further relief as the Court deems just and proper.

6  
7           Dated: May 22, 2007

BLUMENTHAL & NORDREHAUG

8           By: 

9           Norman B. Blumenthal  
10           Attorneys for Plaintiffs

11           UNITED EMPLOYEES LAW GROUP

12           Walter Haines, Esq.

13           65 Pine Ave, #312

14           Long Beach, CA 90802

15           Telephone: (562) 256-1047

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1                   **DEMAND FOR JURY TRIAL**  
2  
3

4                   PLAINTIFFS demand jury trial on issues triable to a jury.  
5  
6

7                   Dated: May 22, 2007  
8

9                   BLUMENTHAL & NORDREHAUG  
10

11                  By: \_\_\_\_\_  
12

13                  Norman B. Blumenthal  
14                  Attorneys for Plaintiffs  
15

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21                  Facsimile: (562) 256-1006  
22

23                  K:\D\NBB\Lewis v. Nexcycle\p-Complaint-Federal.wpd  
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JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**FILED****I (a) PLAINTIFFS**

RAMON BARCIA; MATTHEW CARTER; on behalf of themselves and on behalf of all persons similarly situated,

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**

Monterey, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

CONTAIN-A-WAY, INC., a corporation; doing business as NEXCYCLE and 20/20 RECYCLE CENTERS U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)**Los Angeles**DEPUTY**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Norman Blumenthal, Blumenthal & Nordrehaug, 2255 Calle Clara, La Jolla, CA 92037 (858)551-1223

**ATTORNEYS (IF KNOWN)**

'07 CV 938 IEG (JMA)

**II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)**

1 U.S. Government Plaintiff  XX Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).**

(1) 29 USC 1132 - Déclaratory and Equitable relief under ERISA  
(2) 29 USC 216 - Violations of Fair Labor Standards Act

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 480 Copyrights	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 490 Patent	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 500 Trademark	<input type="checkbox"/> 860 Occupational Safety/Health
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 405 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 990 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

1 Original Proceeding  2 Removal from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

**DEMAND \$**

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO**VIII. RELATED CASE(S) IF ANY (See Instructions):**

JUDGE

Docket Number

DATE May 10, 2007

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 5/23/07 BH RCPT#138535

:\ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place the "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.  
(rev. 07/89)

**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 138535 - BH  
\* \* C O P Y \* \*  
May 23, 2007  
16:23:44**

**Civ Fil Non-Pris**  
USAO #: 07CV0938 CIV. FIL.  
Judge...: IRMA E GONZALEZ  
Amount.: \$350.00 CK  
Check#: BC# 11320

**Total-> \$350.00**

**FROM: BARCIA & CARTER V. CONTAIN-A-W  
CIVIL FILING**